

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,  
8 Plaintiff,  
9 vs.  
10 ADAM LOREN HANKINS,  
11 Defendant.  
12 } No. 2:14-CR-00058-JLQ  
} MEMORANDUM OPINION AND  
} ORDER DENYING MOTION TO  
} SUPPRESS  
}

An evidentiary hearing on Defendant's Motion to Suppress (ECF No. 32) was held on May 16, 2014, and May 19, 2014. Defendant was present, in custody, and represented by appointed counsel **John Gregory Lockwood**. The Government was represented by Assistant United States Attorney **Matthew Duggan**. The court heard testimony from several witnesses, and argument of counsel. At the conclusion of the hearing, the court issued its oral decision denying the Motion. This Order memorializes and supplements the oral findings and conclusions of the court.

## I. Introduction

Defendant, Adam Loren Hankins (“Defendant”), was arrested based on a Criminal Complaint on March 3, 2014. The grand jury subsequently returned an Indictment (ECF No. 19) charging him with one count of felon in possession of an explosive device in violation of 18 U.S.C. § 841(c), 842(i)(1), and 844(a)(1), and one count of possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841. Defendant has filed a Motion to Suppress (ECF No. 32) arguing that the initial seizure of his truck and the subsequent search were in violation of his constitutional rights. Defendant

1 contends there was not probable cause for the issuance of a search warrant for search of  
2 the truck and an insufficient nexus between the truck and the bombing investigation.  
3 The Government contends that the impound and inventory were proper, as the truck was  
4 used in the commission of a felony. The Government further argues there was probable  
5 cause for the issuance of the July 31, 2013 federal search warrant that resulted from an  
6 investigation of automobiles being blown up using explosive materials and blasting  
7 caps. The Government further argued that if probable cause was lacking, the officers  
8 relied on the warrant in good faith and under United States v. Leon, 468 U.S. 897 (1984),  
9 the evidence should not be suppressed.

10       **II. Factual Findings and Conclusions**

11       On July 5, 2013, law enforcement agents executed a federal search warrant at the  
12 residence of Robert Showers, located at 2128 E. Lacrosse Avenue, in Spokane,  
13 Washington to look for explosives. (Northcutt Aff. ¶ 6). Agents recovered 14 pounds  
14 of a blasting agent, a blasting cap, and an empty box for electric blasting caps. At the  
15 execution of the search warrant on July 5, 2013, Ella Jean Claassen was present. She  
16 gave consent for agents to look at her cell phone. One of the contacts in her phone was  
17 for “Hardcore Adam”. (Northcutt Aff. ¶ 12). Defendant, Adam Hankins, is known by  
18 law enforcement to go by the nickname “Hardcore”.

19       On July 20, 2013, Defendant was stopped while driving his White Dodge Dakota  
20 truck (hereafter “truck”), and arrested based on probable cause to believe he had been  
21 involved in an incident on July 9, 2013, involving an assault/false imprisonment of an  
22 individual who was attempting to repossess the truck.<sup>1</sup> The truck was seized by law  
23 enforcement, both as evidence of an alleged assault on the repossession man, and in

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25       

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<sup>1</sup>There are inconsistencies in the record as to whether the arrest occurred on July 19<sup>th</sup> or  
26 July 20<sup>th</sup>. As both the police report (ECF No. 32-1) and Tow/Impound sheet (ECF No. 32-2)  
27 state July 20<sup>th</sup>, the court concludes the correct date is July 20th.

1 order to obtain a search warrant for evidence of firearms and stolen property.

2 In the time period between July 20<sup>th</sup> and July 29, 2013, Robert Showers  
3 participated in jail house phone calls to Ms. Claassen that were recorded. Special Agent  
4 Northcutt, of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”),  
5 reviewed these recorded phone calls. In some of the calls, Showers referred to “semi-  
6 precious stones” and asked Claassen if she had vacuumed them up. There is a reference  
7 that there should have been about 14 of “those stones” and Claassen told Hankins she  
8 got them out with tongs. (Northcutt Aff. ¶ 9). Based on these calls, agents obtained a  
9 second search warrant for the Showers’ residence at 2128 E. Lacrosse, and that warrant  
10 was executed on July 30, 2013. Agents recovered six additional blasting caps. At the  
11 execution of this warrant, “Claassen corroborated the information provided by Showers’  
12 jail calls by confirming that Showers had instructed her to retrieve the blasting caps from  
13 a floor drain in the residence, and that she had retrieved them with tongs.” (Northcutt  
14 Aff. ¶ 10). The fact that Claassen had corroborated this information was also confirmed  
15 by the testimony of ATF Senior Special Agent Christopher Todd Smith. (Transcript at  
16 ECF No. 48, hereafter “Tr.” at p. 43, 53). Agent Smith testified that Claassen confirmed  
17 with him that “what was referred to as the semi-precious stones or jewels - - was the  
18 blasting caps”. (Tr. at p. 53). Agent Smith further testified that Claassen “named off  
19 people that she guessed she thought might have explosives that had been at Robert  
20 Showers’ residence and Mr. Hankins was in fact one of those people.” (Tr. at p. 54).

21 On July 29, 2013, Agent Northcutt had listened to another jail house call from  
22 Showers to Claassen. In this call, Showers referenced “Hardcore”, the rocks that  
23 Claassen had been vacuuming, and Showers stated: “Evidently his [rocks] are messed  
24 up too. They just found some. I have to go see what the hell’s up with that...I have to  
25 go talk to Hardcore.” (Northcutt Aff. ¶ 11). Agent Northcutt believed this reference to  
26 rocks was a reference to blasting caps.

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1       Based on this information, Agent Northcutt applied for a federal search warrant.  
2 His affidavit in support, stated in part: “Your affiant believes it is probable, based on the  
3 aforementioned information, and Showers’ reference to Hankins having “stones”  
4 (blasting caps) that “they just found”, that blasting caps are located in the Dodge Dakota  
5 pickup truck Hankins was driving, and that was impounded by Spokane police.”  
6 (Northcutt Aff. ¶ 15).

7       At the suppression hearing the court heard testimony from several witnesses.  
8 Spokane Police Department Sergeant Kurt Vigesaa testified as to his role in the initial  
9 stop of Defendant’s truck on July 20, 2013. He testified that he stopped the vehicle  
10 because he had been informed by Officer Gately about the July 9, 2013 incident  
11 involving Defendant and the alleged felonious assault on the repossession man. Vigesaa  
12 testified that at the time of the arrest he observed several backpacks and laptop  
13 computers in the cab of the truck. From his experience on the burglary task force, this  
14 caused him to suspect that the truck contained stolen property. Vigesaa’s belief  
15 concerning stolen property was further informed by the fact that he seized three “Quest”  
16 cards from Defendant, which did not bear Defendant’s name. He testified that Defendant  
17 denied consent to search, and he decided to have the vehicle impounded. He testified  
18 that a visual inventory of the vehicle was done from outside the truck at the time of  
19 seizure.

20       ATF Senior Special Agent Christopher Todd Smith testified to his work on the  
21 Monroe Street bombing case, which included involvement in the execution of the July  
22 30, 2013 search warrant at the Showers’ residence. He testified to his belief that “semi-  
23 precious stones” was code for blasting caps. He knew that Defendant went by the  
24 nickname “Hardcore”. He had prepared two affidavits in support of a July 5<sup>th</sup> and July  
25 30<sup>th</sup> search warrant at the Showers’ residence, and those affidavits were incorporated into  
26 the Northcutt affidavit and presented to the Magistrate Judge. (See Northcutt Aff. ¶ 4).  
27 He testified that at the execution of the July 30<sup>th</sup> search warrant, he spoke with Claassen  
28

1 and she corroborated some of the information from the recorded jail house calls. (Tr. at  
2 43, 53-55).

3 Agent Northcutt similarly testified that he believed “stones” were blasting caps  
4 and that he knew Defendant to be “Hardcore”. He testified that the truck was not  
5 searched prior to the execution of the federal search warrant on July 31, 2013. (Tr. at p.  
6 60). He testified that prior to obtaining the search warrant, United States Marshal Hank  
7 Shafer had run a bomb detection dog around the truck, and that the dog had shown some  
8 interest but not alerted. (Tr. at p. 63). He testified to his belief that there was probable  
9 cause for a search warrant. He stated that the blasting cap was found, upon execution  
10 of the search warrant, in a small, green, plastic container in the bed of the pickup.

11 Spokane Police Department Senior Patrol Officer Jason Uberuaga assisted with  
12 the arrest of Defendant on July 20, 2013. He completed the Tow/Impound sheet (ECF  
13 No. 32-2). He wrote the following narrative description on the impound sheet:  
14 “Veh[icle] was involved in an assault on a repo man veh[icle] was towed for evidence  
15 of that and possible thefts/burglaries.” He also checked a box indicating that the vehicle  
16 was impounded as “evidence”. He also conducted the inventory, which he described as  
17 a “generalized look”. He looked at the items in the bed of the truck, but did not open  
18 them, and his testimony was that he did not believe he opened the cab of the truck  
19 because he had written “doors locked” on the impound form.

20 Greg Thieschafer, a Detective with the Spokane Police Department, testified as  
21 to his involvement with the execution of the search warrant on July 31, 2013. He  
22 assisted with searching the cab of the truck and testified that he found blank checks and  
23 credit cards that were not in the Defendant’s name. He also found methamphetamine.

24 Hank Shafer, with the United States Marshals Service, testified as to the  
25 involvement of a canine trained to sniff for explosives. He testified that the canine went  
26 into the cab of the truck, and then the back of the truck. He did not move or open objects  
27 during the canine search. The canine did not alert on anything, but did show some

1 interest in the bed of the truck, where the container with the blasting cap was ultimately  
2 found. Shafer testified that he reviewed the search warrant prior to conducting the  
3 search.

4 Defense counsel stated he intended to call the Defendant's wife, Glo Hankins, to  
5 testify. She is sometimes referred to in the record as Glo Cowin-Mitchell. However, she  
6 was unavailable at the time he sought to call her. Defense counsel made a proffer, which  
7 was largely consistent with the Declaration of Glo Hankins (ECF No. 35) filed on May  
8 14, 2014. Her proffered testimony was essentially that Defendant is careful with his  
9 tools, and that he usually kept the green plastic box containing tire repair materials under  
10 the passenger seat. She therefore believed it would have been "uncharacteristic" for the  
11 green box to be in the bed of the truck.

12 The court makes the following findings and conclusions:

13 1) Sergeant Vigesaa stopped Hankins in his truck on July 20, 2013, based on  
14 probable cause to believe Hankins had been involved in the unlawful  
15 imprisonment/assault of the truck repossession man on July 9, 2013;

16 2) On July 20, 2013, Hankins was driving the same truck that was involved in the  
17 July 9, 2013 incident;

18 3) Vigesaa and Officer Uberuaga impounded the vehicle as evidence both because  
19 it was used in the commission of a felony, and because they believed it may contain  
20 firearms and/or stolen property;

21 4) Uberuaga conducted an inventory, which was not a search, but was rather just  
22 a generalized look at the items in the back of the truck, and the inventory did not  
23 describe any items in the cab of the truck, perhaps because the doors were locked;

24 5) The court does not find that Agents Northcutt or Smith made any false  
25 statements in the affidavits presented to the Magistrate Judge in support of the search  
26 warrant. The court found the testimony of these witnesses to be credible;

27 6) The court finds there was no search of the truck prior to the execution of the

1 federal search warrant on July 31, 2013;

2       8) The court finds the search conducted by Shafer and the canine occurred after  
3 issuance of the federal search warrant. It appears there was a sweep around the outside  
4 of the vehicle with the canine prior to the issuance of the warrant, as described in  
5 paragraph 16 of the Northcutt affidavit. Shafer was not specifically asked about the prior  
6 sweep, but specifically testified that the search was conducted after the warrant was  
7 issued;

8       9) The court finds the evidence viewed as a whole provided a substantial basis for  
9 the Magistrate's finding of probable cause, as discussed further *infra*;

10      10) The court further finds, as discussed below, that the good faith exception of  
11 *United States v. Leon*, 468 U.S. 897, 926 (1984) applies, in that the warrant was clearly  
12 supported by at minimum a colorable argument for probable cause and the Agents  
13 reliance thereon was objectively reasonable.

14      **III. Discussion**

15      The questions presented were whether the initial seizure of the truck was proper,  
16 and whether the federal search warrant to search the vehicle for evidence of explosives  
17 was supported by probable cause.

18      **A. Impound and Inventory**

19      A vehicle may be lawfully impounded "as evidence of a crime, when the police  
20 have probable cause to believe the vehicle has been stolen or used in the commission of  
21 a felony offense." *State v. Tyler*, 177 Wash.2d 690, 696 (2013). A noninvestigatory  
22 inventory search of a vehicle may be conducted in good faith after it is lawfully  
23 impounded. *Id.* at 701. The requirement of good faith "is a limitation that precludes an  
24 inventory search as a pretext for an investigatory search. *Id.* Searches of locked trunks  
25 or locked containers are prohibited during an inventory search, absent manifest necessity.  
26 *Id.* at 708.

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1       In Tyler the Washington Supreme Court rejected the suggestion from prior  
2 Washington state case law that if an owner of the vehicle was present, the owner must  
3 be asked for consent to an inventory search. See for example State v. Williams, 102  
4 Wash.2d 733 (1984) and *State v. White*, 135 Wash.2d 761 (1998). Tyler repudiates these  
5 prior statements as dicta, and clearly holds, “law enforcement officers do not have to  
6 obtain consent in order to conduct an inventory search of a lawfully impounded vehicle.”  
7 *Id.* at 694.

8           The initial seizure of the truck was proper, because the vehicle was used in the  
9 commission of a felony (the unlawful imprisonment/assault of the repossession man on  
10 July 9, 2013). Both Sergeant Vigesaa and Patrol Officer Uberuaga were aware at the  
11 time of Hankins’ arrest that Hankins was involved in the assault on July 9, 2013. Officer  
12 Uberuaga indicated on the Impound sheet, which was completed contemporaneously at  
13 the time of arrest, that the vehicle was impounded as evidence of the assault on the  
14 repossession man and for evidence of possible stolen property. The seizure was proper,  
15 and the officers did not need Hankin’s consent to conduct an inventory search.  
16 However, the officers’ testimony was that the inventory was not a “search” but rather just  
17 a generalized look, which explains why neither the methamphetamine or the blasting cap  
18 was found at the time of the inventory.

## 19           **B. The Automobile Exception**

20           The Government has not argued that the automobile exception to the warrant  
21 applies, and thus the court will not determine its applicability. “If a car is readily mobile  
22 and probable cause exists to believe it contains contraband, the Fourth Amendment thus  
23 permits police to search the vehicle without more.” *Pennsylvania v. Labron*, 518 U.S.  
24 938 (1996). In *Labron*, the Supreme Court rejected the argument that exigent  
25 circumstances must be present in order to conduct the search without a warrant. The  
26 Supreme Court explained that its prior cases established that a vehicle’s ready mobility  
27 is “an exigency sufficient to excuse failure to obtain a search warrant once probable

1 cause to conduct the search is clear." *Id.* at 940. The Supreme Court further stated that  
 2 an individual has a "reduced expectation of privacy in an automobile, owing to its  
 3 pervasive regulation." *Id.*

4 **C. Probable Cause for a Warrant**

5 The probable cause standard "protects citizens from rash and unreasonable  
 6 interferences with privacy and from unfounded charges of crime, while giving fair  
 7 leeway for enforcing the law in the community's protection." *Maryland v. Pringle*, 540  
 8 U.S. 366, 370 (2003). Probable cause is a "fluid concept-turning on the assessment of  
 9 probabilities in particular factual contexts-not readily, or even usefully, reduced to a neat  
 10 set of legal rules." *Id.* at 371. It is a concept "incapable of precise definition" which  
 11 depends on the "totality of the circumstances." *Id.* "The substance of all the definitions  
 12 of probable cause is a reasonable ground for belief of guilt," and the "belief of guilt must  
 13 be particularized with respect to the person to be searched or seized." *Id.* A court may  
 14 certainly consider criminal history in determining probable cause, but "criminal history  
 15 alone cannot establish reasonable suspicion or probable cause." *Burrell v. McIlroy*, 464  
 16 F.3d 853, 858 n. 3 (9th Cir. 2006).

17 The relevant inquiry is whether probable cause existed for the federal search  
 18 warrant that was issued on July 31, 2014. As to the federal search warrant, "[t]he  
 19 validity of a search warrant depends upon the sufficiency of what is found within the  
 20 four corners of the underlying affidavit." *United States v. Taylor*, 716 F.2d 701, 705 (9th  
 21 Cir. 1983). "An affidavit is sufficient if it establishes probable cause; that is, if the stated  
 22 facts would reasonably allow a magistrate to believe that the evidence will be found in  
 23 the stated location." *Id.*

24 The review of a Magistrate's determination, "is not to conduct a de novo  
 25 determination of probable cause, but only to determine whether there is substantial  
 26 evidence in the record supporting the magistrate's decision to issue the warrant."  
 27 *Massachusetts v. Upton*, 466 U.S. 727, 728 (1984). The court employs a "totality of the

1 circumstances analysis” to determining probable cause, and not a hypertechnical  
 2 approach of judging bits and pieces of information in isolation. *Id.* at 732.

3       The court has reviewed the lengthy affidavits of Agents Northcutt and Smith that  
 4 were before the Magistrate. Those affidavits laid out in detail an ongoing investigation  
 5 into Robert Showers that had resulted in seizing various explosive materials. The  
 6 affidavits described the relationship between Showers and Claassen, and that Claassen  
 7 had “Hardcore Adam” as a contact in her cell phone. (Northcutt Aff. ¶ 12). The  
 8 affidavits describe jailhouse calls occurring between July 22<sup>nd</sup> and July 29th between  
 9 Showers and Claassen discussing “stones” that she needs to get out, or has vacuumed  
 10 out, or used tongs to retrieve. (Northcutt Aff. ¶ 9). The affidavits explain how the agents  
 11 learned that rocks or stones were code for blasting caps, and that they verified this when  
 12 they executed a search warrant on July 30<sup>th</sup>, and “Claassen corroborated the information  
 13 provided by Showers’ jail calls by confirming that Showers had instructed her to retrieve  
 14 the blasting caps from a floor drain in the residence, and that she had retrieved them with  
 15 tongs.” (Northcutt Aff. ¶ 10).

16       Northcutt’s Affidavit also describes a July 29<sup>th</sup> call between Claassen and Showers  
 17 that referenced the “rocks you were down there vacuuming up”, and that Hardcore’s are  
 18 messed up too and had just been found. (*Id.* at ¶ 11). The Affidavit further described the  
 19 investigation had shown Defendant and Showers were housed on the same floor at the  
 20 Spokane County jail, and that on July 19, 2013 Hankin’s vehicle had been impounded  
 21 to apply for a search warrant. (*Id.* at ¶ 12-14). Agent Northcutt then stated his belief that  
 22 the reference to “stones” (blasting caps) that “they just found” was a reference to  
 23 Hankin’s truck which had not yet been searched. (*Id.* at ¶ 15).

24       This court concludes that there was a substantial basis for the Magistrate’s  
 25 determination of probable cause.

26           **D. Nexus**

27       Defendant argues that the affidavit in support of the search warrant did not

1 establish a sufficient nexus between the explosives and Hankin's truck. "For probable  
 2 cause, an affidavit must establish a reasonable nexus between the crime or evidence and  
 3 the location to be searched." *United States v. Crews*, 502 F.3d 1130, 1136 (9<sup>th</sup> Cir. 2007).  
 4 "It need only be reasonable to seek the evidence at the location indicated in the  
 5 affidavit." *Id.* at 1137. Neither certainty, nor even near certainty is required. *United*  
 6 *States v. Espino*, 2014 WL 59750 (9<sup>th</sup> Cir. 2014) citing *Crews*.

7 The reasonable basis to believe that blasting caps were in the truck is set forth in  
 8 the Northcutt Affidavit, particularly at Paragraphs 9-thru-15. Showers told Claassen he  
 9 thought that Hardcore's "stones" (blasting caps) had just been found. Northcutt knew  
 10 that Defendant (Hardcore) had just been arrested, his truck had been impounded, and it  
 11 had not been searched. (Northcutt Aff. ¶ 15). Paragraph 16 of the Affidavit further stated  
 12 that a bomb detection canine had made a sweep around the vehicle, and although the  
 13 canine did not alert for explosives, he did show some interest.

#### 14       **E. Good Faith Exception**

15       The United States Supreme Court has recognized an exception to the exclusionary  
 16 rule where law enforcement has acted in good faith upon a search warrant issued by a  
 17 neutral Magistrate. In such circumstances, even if a reviewing court finds a lack of  
 18 probable cause to support the warrant, "suppression is appropriate only if the officers  
 19 were dishonest or reckless in preparing their affidavit or could not have harbored an  
 20 objectively reasonable belief in the existence of probable cause." *United States v. Leon*,  
 21 468 U.S. 897, 926 (1984). The Court further stated that "[r]easonable minds frequently  
 22 may differ on the question whether a particular affidavit establishes probable cause," and  
 23 thus great deference is afforded the Magistrate's determination. *Id.* at 914. "In the  
 24 ordinary case, an officer cannot be expected to question the magistrate's probable cause  
 25 determination." *Id.* at 921.

26       A court may make the good faith determination, without making the conclusive  
 27 determination of whether the affidavit was supported by probable cause. *United States*

1     *v. Crews*, 502 F.3d 1130, 1136 (9<sup>th</sup> Cir. 2007)(“Before embarking on the exercise of  
 2 determining whether the affidavit supported probable cause, we may proceed directly to  
 3 the issue of whether there was good faith reliance.”). The good faith exception may  
 4 apply if the affidavit establishes “a colorable argument for probable cause.” *Id.* If there  
 5 is such a “colorable argument for probable cause” and the officer’s reliance on the  
 6 warrant is objectively reasonable, “[t]his ends the inquiry without having to belabor the  
 7 issue of whether the affidavit stated probable cause.” *Id.* at 1136; see also *United States*  
 8 *v. Burford*, 289 Fed.Appx. 201 (9<sup>th</sup> Cir. 2008).

9         This court finds that there were no false statements in the affidavits of Agent  
 10 Northcutt or Agent Smith that were submitted in support of the application for the  
 11 federal search warrant. Defendant has not argued, and there has been no showing, that  
 12 the Magistrate Judge failed to act in a detached and neutral manner. The court further  
 13 finds, as stated *supra*, that the search warrant issuance was supported by probable cause.  
 14 However, even if this court had not reached that conclusion, the warrant is supported  
 15 by at minimum a colorable argument for probable cause such that an officer’s reliance  
 16 upon it was objectively reasonable. The court concludes that the good faith exception  
 17 would also apply.

#### 18              **F. Delay in Obtaining Warrant**

19         Defendant’s Motion argued that there was unreasonable delay in obtaining the  
 20 search warrant. Defendant did not advance this argument at the two-day evidentiary  
 21 hearing and argument. However, the court will address it briefly. The vehicle was  
 22 impounded on July 20, 2013, and a search warrant obtained, and search executed, on July  
 23 31, 2013. The eleven day delay was not unreasonable. See *United States v. Sullivan*,  
 24                  F.3d \_\_\_, 2014 WL 2199316 (9<sup>th</sup> Cir. May 28, 2014)(rejecting defendant’s argument  
 25 that 21-day delay in obtaining search warrant for seized laptop computer was  
 26 unreasonable). In *Sullivan*, the court noted that defendant was in custody during the 21-  
 27 day time period: “Where individuals are incarcerated and cannot make use of seized  
 28

1 property, their possessory interest in that property is reduced.” *Id.* at \*6. Similarly,  
2 Hankins was in custody when his vehicle was impounded. Hankins does not argue that  
3 he or his wife made any attempt to retrieve the vehicle from impound during the 11-day  
4 period. The court considers the Government’s course of conduct and totality of  
5 circumstances concerning the investigation. “Even if the government could have moved  
6 faster to obtain a search warrant, the government is not required to pursue the least  
7 intrusive course of action.” *Id.* at \*7.

8 The warrant was obtained just two-days after the jail house call in which Showers  
9 mentioned Hankins, and just 1-day after Agent Smith corroborated some of the  
10 information from the calls by talking to Claassen on July 30<sup>th</sup>. The court finds no  
11 unreasonable delay.

12 **G. Motion for Reconsideration**

13 After the court orally denied the Motion to Suppress on May 19, 2014, and  
14 advised counsel that a Memorandum Opinion would be forthcoming, Defendant filed a  
15 Motion to Reconsider (ECF No. 49). The Motion to Reconsider was filed before the  
16 court had issued its written Opinion. The Motion to Reconsider focuses primarily on the  
17 probable cause and nexus determination and the court’s finding concerning the testimony  
18 of Deputy Marshal Shafer. Defendant argues that there was just one search by Mr.  
19 Shafer and his explosive-detecting canine, Zion. Defendant argues that this search  
20 occurred prior to the issuance of the warrant, included Zion going into the cab, and was  
21 an improper warrantless search.

22 Defendant’s argument ignores critical testimony of Mr. Shafer. The court  
23 acknowledged at the time of the hearing that the testimony concerning Zion was  
24 “confusing” and “not absolutely clear” (Tr. at p. 142-143). The court indicated to  
25 counsel at that time that it appeared Mr. Shafer was not asked about the sweep prior to  
26 the warrant, but rather about the search after the warrant was issued. It’s clear from  
27 Agent Northcutt’s affidavit that Zion performed “a sweep around the subject vehicle”

1 prior to the issuance of the warrant. (at ¶ 16). Marshal Shafer testified to his practice of  
2 always reviewing the search warrant prior to a search. (Tr. at p. 131)(“Before I do all  
3 searches, when there’s a search warrant, I read the search warrant.”). He testified that  
4 on this occasion when he arrived he read a copy of the search warrant. (Tr. at p. 126).  
5 He testified that a sweep takes place after the warrant has been issued<sup>2</sup>. (Tr. at p. 127).  
6 He also testified that if there was not a warrant, he would not have his dog enter a  
7 vehicle. (Tr. at p. 132). The court made the finding at the conclusion of the suppression  
8 hearing that at the time the dog was in the cab and bed of the truck, the warrant had been  
9 issued. (Tr. at 142-43). That is the finding of the court.

Under the facts of this case, having Zion walk around the outside and sniff the truck prior to the issuance of a warrant is not a “search” within the meaning of the Fourth Amendment. See *United States v. Place*, 462 U.S. 696 , 707 (1983)(“the canine sniff is *sui generis*. We are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure.”); *Illinois v. Caballes*, 543 U.S. 405 (2005).

16 For all the reasons set forth in this Memorandum Opinion, the Motion to  
17 Reconsider is DENIED.

18 || IV. Conclusion

19 The initial seizure of the truck was proper, because the vehicle was used in the  
20 commission of a felony (the unlawful imprisonment/assault of the repossession man on  
21 July 9, 2013). The testimony of Sergeant Vigesaa and Patrol Officer Uberuaga supports  
22 the finding that the vehicle was impounded as evidence of the assault on the repossession

<sup>24</sup>Part of the confusion may be caused by the interchangeable usage in the testimony and briefing  
<sup>25</sup>of "sweep" and "search". The court thinks of "sweep" as outside the vehicle, and not requiring a  
<sup>26</sup>warrant. A "search" would require a warrant. Mr. Shafer testified that he was going to do a "sweep"  
<sup>27</sup>of a vehicle that they had a search warrant for.

1 man and for evidence of possible stolen property. The court further concludes that  
2 probable cause supported the issuance of the July 31, 2013 federal search warrant. Some  
3 deference is owed to the Magistrate's determination, and the evidence viewed as a whole  
4 provided a substantial basis for the Magistrate's finding of probable cause. The court  
5 would additionally deny the Motion to Suppress based on the good faith exception of  
6 *United States v. Leon*, 468 U.S. 897, 926 (1984), in that the warrant was clearly  
7 supported by at minimum a colorable argument for probable cause and the Agents  
8 reliance thereon was objectively reasonable

9 **IT IS HEREBY ORDERED:**

- 10 1. For all the aforesaid reasons, the Motion to Suppress (ECF No. 32) is  
11 **DENIED.**
- 12 2. The Motion to Reconsider (ECF No. 49) is **DENIED**.
- 13 3. The final Pretrial Conference remains set for **June 19, 2014**, and jury trial  
14 remains set for **June 30, 2014**.

15 **IT IS SO ORDERED.** The Clerk shall enter this Order and furnish copies to  
16 counsel.

17 Dated this 8<sup>th</sup> day of June, 2014.

18 s/ Justin L. Quackenbush  
19 JUSTIN L. QUACKENBUSH  
20 SENIOR UNITED STATES DISTRICT JUDGE  
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